

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Shane J. Smith,

Plaintiff,

v.

Case No. 11-13523
Honorable Sean F. Cox

Commissioners of Social Security,

Defendant.

ORDER
ACCEPTING AND ADOPTING REPORT & RECOMMENDATION

Plaintiff brought this action seeking judicial review of the Commissioner's decision denying his applications for Disability Insurance Benefits and Supplemental Security Income Benefits. Thereafter, the matter was referred to Magistrate Judge Steven Whalen for determination of all non-dispositive motions pursuant to 28 U.S.C. § 636(b)(1) and Report and Recommendation pursuant to § 636(b)(1)(B) and (C).

Thereafter, the parties filed cross motions for summary judgment. In a Report and Recommendation ("R&R") issued on July 11, 2012, Magistrate Judge Whalen recommended that this Court: 1) Deny Plaintiff's Motion for Summary Judgment; and 2) Grant the Commissioner's Motion for Summary Judgment, affirming the findings and conclusions of the Commissioner.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after

being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

On July 25, 2012, Plaintiff filed timely objections. (Docket Entry No. 18).

The Commissioner has not filed a response to the objections and the time for doing so has passed.

Plaintiff first objects to the Magistrate Judge’s Recommendation that the ALJ’s decision was within the “zone of choice” accorded the administrative fact-finder. This objection is based upon the Magistrate Judge’s agreement with the ALJ’s determination that factors relating to Plaintiff’s kidney stones did not prevent full-time employment. (Objections at 1). Plaintiff asserts that while the passing of kidney stones may have been temporary, it was a recurrent condition. The Court finds this first objection without merit. For the reasons set forth in the R&R, the Court agrees with the Magistrate Judge that the ALJ’s finding that Plaintiff’s kidney stone problems did not prevent full time employment was within the zone of choice accorded the administrative fact-finder. (*See* R&R at 13 & 15-16).

Plaintiff’s second objection challenges the ALJ’s credibility determination. Specifically, Plaintiff faults the Magistrate Judge’s agreement with the ALJ that Plaintiff’s claims of daytime sleepiness were exaggerated. The Court finds this objection without merit and agrees that, for the reasons set forth in the R&R, the ALJ’s credibility determination was sufficiently supported and explained. (*See* R&R at 13-14).

Plaintiff’s third and final objection is that the Magistrate Judge erred in finding that the medical opinions of Dr. Kahn, a treating physician, did not provide grounds for a remand.

Plaintiff asserts that the Magistrate Judge, and the ALJ, incorrectly applied the “treating physician’s rule” in this matter. The Court finds this objection without merit and agrees that, for the reasons set forth in the R&R, the ALJ’s analysis of Dr. Kahn’s opinion does not provide grounds for remand. (*See* R&R at 14-15).

Accordingly, the Court hereby ADOPTS the July 11, 2012 R&R. IT IS ORDERED that Plaintiff’s Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that the Commissioner’s Motion for Summary Judgment is GRANTED and that the Commissioner’s findings and conclusions are AFFIRMED.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 24, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 24, 2012, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager